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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-262
Tier Buy Through Prohibitions	)	

COMMENTS

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TABLE OF CONTENTS

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COMMENTS OF CONTINENTAL CABLEVISION, INC.

Introduction

Continental Cablevision submits these Comments on the satellite tier buy through regulations the Commission has proposed in this proceeding.

Continental is the third largest multiple cable system operator in the United States. It serves nearly 2.9 million basic subscribers in 600 communities in 16 states, or roughly 5.5% of the nation's cable television households.

Summary

Many systems are not addressable, and even subscribers of an addressable system who do not subscribe to premium channels may not have an addressable box on premises, or have one only on selected TV sets. Thus, the costs of making a tier "addressable" is substantial for both non-addressable and addressable systems. Existing traps remove both tier and premium signals, making trapping an ineffective device to permit basic subscribers to "buy around" the tier. Tier scrambling creates very significant customer and business burdens, including an unwelcome interference with TV and VCR features and costly investment in analog technology soon to be made obsolete by digital. Channel realignment to facilitate trapping solutions create similar burdens, including significant limits on future program additions.

The Commission should therefore adopt a rule exempting from the tier buy through prohibition any system which does not scramble all tier channels; and permitting the recovery of converter costs from basic broadcast subscribers who elect to buy premium services in fully addressable systems.

The corollary discrimination rule should not proscribe installation, package, and similar discounts. These offer genuine consumer savings, are an essential part of cable marketing, and are commonly accepted in service industries.

Comments

I. ENGINEERING OF "ADDRESSABLE" SYSTEMS

A. A Substantial Number of Systems Are Non-Addressable, And Use Traps to Configure Service Offerings

"Addressability" refers to the ability of a cable system to authorize or deauthorize services to individual subscribers' converters from a remote (headend or hub) location by computer communication.

Approximately 30% of Continental's systems have no form of addressability in place. In those systems, a subscriber is authorized or deauthorized for satellite programming tier services or premium (pay or pay-per-view) services by dispatching a truck and installing or removing filters and/or traps. These traps prevent or permit particular frequencies (channels) from passing through to the TV receiver. Because satellite tier services remain very popular, even among households which do not subscribe to premium services, "satellite tiers" are trapped out only in a relatively small percentage of homes.

B. The Costs of Installing and Operating A 25,000 Subscriber Addressable System Exceed $100,000 in Headend Costs and $5 Million in Converter Costs

A system is made addressable by the installation of equipment at the headend and the installation of at least one addressable converter at each addressable subscriber location.

A suburban system of 25,000 subscribers would typically incur these costs to go addressable:

1.	Addressable controller (computer) including software for home terminal	$30,000
2.	Billing computer software (interface to controller) includes present value of annual license fees (5 years)	$50,000
3.	Modems and leased lines includes present value of leased lines to interconnect controller to remote headend (5 years)	$10,000

4. Addressable encoders (scrambling devices) minimum $2,000 for each channel installed. Assume 20 channels scrambled — $40,000

5. Addressable converters — $4.8 million

   a. Typical baseband converter with handheld remote, tax and freight @ $120 per unit

   b. 50% of subscribers use two televisions, therefore 1.5 weighted converters per subscriber

   c. 10% required in inventory, including units in repair at any given time.

   d. Total converter cost is $192/subscriber.

6. Installation: technician wages, insurance, FICA, LTD, fuel, vehicle costs, tools, data processing to enter addressable code into DDP system typically ranges from $35-$50 dispatch to install a converter — $0.875-$1.25 million

(The rate development for converter costs will be presented in detail in the Rate Regulation Rulemaking, MM Docket No. 92-266).

C. Common Satellite Tier Traps Used on Addressable Systems Frequently Preclude the Delivery of Premium Signals to Subscribers Who Do Not Receive the Satellite Tier

1. Not All Subscribers on "Addressable" Systems Receive Addressable Converters

Approximately 70% of Continental's cable systems have some form of addressability in place, but not all channels are scrambled and not all subscribers require addressable boxes. This is because the most common method for deploying addressability is to "scramble" only premium and pay-per-view programming services and to place addressable boxes in the homes of premium and PPV subscribers. In such a system, only premium subscribers are "addressable," and only on sets receiving the premium services. Although national pay penetration is normally reported at 78%, "pay penetration" is expressed as pay units per basic cable household. A household subscribing to two pay services counts as "two" pay units. Thus, the number of basic households receiving pay services is substantially less. Continental systems have experienced higher pay-to-basic penetrations than the industry at large. Continental systems have a pay penetration of approximately 90%, but only 50% of the basic households served by Continental take pay services and not all of those have addressable boxes at every outlet. Thus, in most Continental "addressable" systems, a substantial number of subscribers are not "addressable."

Among those non-premium subscribers served by an addressable headend, those electing not to receive satellite tier services are handled exactly as would be any nonaddressable subscriber served by a nonaddressable headend: a truck is dispatched, and traps and filters are installed. The typical loaded cost of installing traps and filters is $35-$50 per incidence, but costs can be considerably higher.

2. Common Satellite Tier Traps Remove Both Satellite Tier Signals And Premium Signals Carried on Upper Channels

However, in most addressable systems, the channels have been aligned so that "basic" signals are in the low band, satellite tier signals are above them, and premium signals are placed on various channels within the satellite tier band. The traps and filters installed to remove satellite tier signals for a basic-only subscriber <u>also</u> filter out and remove all premium signals (including "addressable" premium signals) in the satellite tier band. Some systems have a different channel position for one (usually older) premium service. For example, HBO might be trapped on Channel 3, and all other premium services "scrambled" on upper channels. For such systems, a "basic only" subscriber who wishes to buy HBO without satellite tier could physically be accommodated by dispatching a truck and removing the trap from Channel 3; but that subscriber could not buy Showtime without the satellite tier because the filter which removes the satellite tier channels would also removes the "addressable" Showtime channel.

3. Scrambling All Satellite Tier Signals Creates Customer And Business Burdens

There are several reasons that Continental refrains from scrambling satellite tier signals in non-urban markets.

1. Scrambling creates the need for a converter, which disables many functions on a customer's TV set. This is generally unwelcome by our customers.

2. Scrambling increases the "lockup" time on each channel, adding 3/4 to 1 second to the time it takes for a viewer to see a channel as he or she surveys what's on television.

3. Scrambling requires visits to subscriber homes to reconfigure VCRs for home recording. To facilitate home taping, Continental typically installs a series of mechanical switches which allow customers to bypass the converter when taping an unscrambled channel, while routing signals through the converter when taping a scrambled channel. As new channels are scrambled the logic of the switches is altered, and the series must be reconfigured. In our experience, nearly half of all homes require service calls for such VCR hookup.

4. Economics and technology have changed

Continental's business plans. Four years ago, Continental's goal was to place an addressable converter in every home to permit channel mapping and pay-per-view sales. With digital/compression technology advancing rapidly, we are reluctant to invest substantially more in analog addressable converters.

5. Zenith Z-TAC converters, deployed in some Continental systems, have only eight levels of addressable codes, which will not accommodate scrambling all signals on the satellite tier as well as pay TV and pay-per-view services. Thus, scrambling satellite tiers even in an "addressable" system may require upgrade or replacement of existing converters.

4. Realigning All Signals Creates Customer And Business Burdens

There are also several reasons why Continental is reluctant to realign channels to place all premium services above basic and move satellite tier services up, to permit "trapping" solutions to buy through.

1. Such "one time" realignment would severely restrict the ability to add premium services, additional "multiplexed" pay services, or pay-per-view services in the future.

2. Channels 18, 19 and 20 are prone to interference from taxicabs and other mobile users. Typically, lower value

networks are placed on those channels -- not premium services. Premium services are located on the cleanest possible channel because the slightest interference may cause a customer to drop that single-channel product.

3. As with scrambling, realignment changes the logic of the switches installed for home taping, and requires home visits.

4. Installation of either negative or positive traps requires home visits. Positive traps need to be installed at the tap point or ground bloc in order to make permitted signals available to all TV sets. Negative traps require visits to every trap and pedestal of basic only customers.

5. Positive traps cannot be placed on all channels. Positive traps create signal loading problems. They may also create interference on adjacent channels.

6. There is a generally held view among advertisers and networks that a higher channel position tends to reduce viewership. If cable is expected to earn most of its profits from cable programming services, its future should not be restricted in this way.

Continental's present channel alignments have been selected to minimize these problems.

D. Even When Satellite Tiers Are Scrambled, "Basic Only" Customers Frequently Do Not Have Addressable Boxes

There is another design common in urban markets. The satellite tier channels -- and in some cases the basic "broadcast" channels -- are scrambled as an anti-piracy measure. Theft in urban markets is so rampant that trapping is an ineffective security measure. Thus, in urban markets like Los Angeles, CA and Cambridge, MA, Continental scrambles all satellite tier signals. This creates an encrypted barrier to theft, so long as the supply of "pirate" chips and "pirate" addressable converters is policed. In such systems, a premium and satellite tier subscriber could be permitted to drop the satellite tier by readdressing the box to deauthorize the satellite tier but not the premium signal. However, a basic only customer would not have an addressable box in place. To permit a basic customer to buy premium services without the satellite tier, an operator would need to purchase and install a new addressable box at the basic-only set.

II. APPLICATION OF THE SATELLITE TIER BUY THROUGH RULE AND IMPLEMENTATION EXCEPTION

A. The Satellite Tier Buy Through Restriction Does Not Apply to Non-Addressable Headends

We agree with the Commission's interpretation that the satellite "tier buy through" restriction does not apply to a headend which is not addressable. Industry and Congressional concerns which shaped the statute focused on the cost of installing addressable headends and the cost of deploying addressable converters. An opponent of the bill feared that the anti-buy through provision "requires cable operators to install sophisticated addressable converters in all subscriber homes." 138 Cong. Rec. S 14603 (Sep. 22, 1992). In response, sponsors of S.12 pointed to the Conferees' decision to delay those costs for 10 years. A Grassley-Inouye colloquoy is illustrative:

> Sen. Grassley: I am concerned that this provision may require some cable operators to install addressable technology that could increase their costs of providing service.
>
> Sen. Inouye: In response to the concerns about costs expressed by some cable operators, however, the conferees on S.12 gave cable operators 10 years to comply with this provision.

138 Cong. Rec. S 14608 (Sep. 22, 1992).

The Statute expressly contemplates that compliance will be effected through addressability. § 623(b)(8)(B) ("addressable converter boxes"); § 623(b)(3) (installation of "addressable converter box or other equipment as is required to access programming described in paragraph (8)"); § 623(b)(5)(C) (downgrade by "coded entry on a computer terminal" at addressable headend.) The Statute's reference to "other technological limitations" was intended to provide the FCC ample authority to waive the requirements even for addressable systems. Conference

Report 102-862 at 64; 138 Cong. Rec. S 14603 (Sep. 22, 1992). Thus, systems which are not addressable are not required to comply with the satellite "tier buy through" rule during the 10 year implementation exception.

B. The Satellite Tier Buy Through Restriction Does Not Apply to Systems Which Do Not Scramble the Satellite Tier

The Statute is more difficult to apply in "hybrid" systems which, for example, scramble premium services but not the satellite tier, and furnish addressable converters only to premium subcribers. With respect to addressable subscribers, it may not be possible to deliver the basic and premium channels without the satellite tier, because the traps and filters used to block the satellite tier will also block premium channels. The Statute provides no evidence of intent to require such systems to incur the cost of reconfiguring and reprocessing their entire lineup at the headend and then imposing complex and burdensome trapping and filtering solutions. As noted above, it anticipated the installation of addressable converters at subscriber premises so that changes in service could be effected at nominal cost by "coded entry on a computer terminal."

While it is possible at considerable cost and inconvenience to customers to realign all channels to allow "basic-only" subscribers to "buy around" the satellite tier to reach pay, it is not required by the statute. Indeed, given the value which most subscribers assign to satellite tier services and the declining popularity of pay, we question the wisdom of compelling operators to suffer such costs to accommodate the relatively few subscribers likely to buy around the satellite tier.

We conclude and urge the Commission to find that systems which do not scramble and address the satellite tier are, essentially, nonaddressable systems as to the satellite tier, and have 10 years to invest in the technology to meet the "buy through" requirement.

C. The Satellite Tier Buy Through Restriction Permits Recovery of Special Converter Charges When Installing Addressable Boxes in Basic-Only Homes

Systems which do scramble the satellite tier but which do not have addressable converters placed in "basic-only" homes face a dilemma. They are technically capable of permitting a premium customer to drop the satellite tier, because the converter is on site. They are not technically capable of permitting a basic-only customer to upgrade to premium (without satellite tier) without dispatching a truck, and installing the new converter at the basic home. The operator has two choices:

The operator could permit current premium customers to drop the satellite tier if a box is in place. But the operator could not permit current basic-only customers to buy premium alone without investing in new addressable converter boxes, which the Congress sought to postpone for 10 years. This, however, creates an anomaly of "old" subscribers buying around the satellite tier while "new" subscribers could not. It also creates an incentive for "new" subscribers to buy premium with basic and satellite tiers, get an addressable converter and then drop the satellite tier like an "old" subscriber.

Alternatively, an operator could install a new addressable converter and permit a "basic-only" subscriber to skip the satellite tier to buy premium services. However, unless the operator can recover the converter costs from the "new" subscriber, this would impose precisely the cost increases which Congress sought to avoid. These costs are of particular concern because they would be incurred for analog boxes when the industry is on the threshold of digital technology.

We believe the better alternative is to permit an operator to provide an addressable converter to a new subscriber if that subscriber bears the cost of the converter. That cost would be the difference between an addressable and non-addressable converter (or, in some circumstances, the full cost of an addressable converter where no converter is otherwise required.) Whether the cost would be recovered over time (such as the remaining economic life of an analog converter) or up front is a pricing decision which should be left to the operator's business judgment. The benefit of this approach is:

(1) It avoids discrimination between "old" and "new" subscribers.

(2) It comports with the legislative intent that "the buy through provision ... should not result in an increase in cable rates," 138 Cong. Rec. S. 14603 (Sep. 22, 1992), and the explanation that "Chairman Markey [is] allowing the equipment cost to meet this provision to be passed along to the consumer," 138 Cong. Rec. H 6508 (July 23, 1992).

(3) It gives meaning to the instruction that an operator install an "addressable converter box" if requested by the subscriber to buy premium without satellite tier. [§ 623(b)(3)(A)]

Although it is possible that "old" subscribers would not have been charged a converter fee in the past, while "new" subscribers will, this should be an expected result of the changes wrought by the 1992 Act. It is not discrimination, nor a departure from a "uniform rate structure." It is an effort to extend the benefits of addressability to previously non-addressable customers without imposing pressure on rates.

III. APPLICATION OF THE DISCRIMINATION RULE

The corollary non-discrimination rule in 623(b)(8) applies only to systems subject to the satellite tier buy through prohibition. The Commission has questioned how cable operators' discount practices may be reconciled with the requirement that an affected cable operator "may not discriminate" between basic-only and other subscribers with regard to rates charged for premium or pay-per-view programming.

A. Installation, Package, and Other Discounts Are Common and Beneficial

It is common for operators to offer discounts to encourage subscriptions to more than basic service. Among the most common discounts are:

1. Free or reduced installation if a customer takes basic, satellite tier, and one or more premium services.

2. "Multi-pay" discounts. For example, Continental sells New England Sports Network and Sports Channel for $9.95 each, or $13.95 for both in many New England systems. Depending on the season, and the system's proximity to Boston, anywhere from 20% to 80% of premium sports subscribers opt for the combination package.

3. "Packages" in which the a la carte rate for

basic, satellite tiers, premiums, remotes, or guides are discounted to encourage subscription to all. For example, our Stockton, CA "Variety Pack" provides HBO; HBO2 (multiplexed); a choice of Cinemax, Showtime or Disney; a satellite tier including AMC, Comedy Central and other services; a remote control for every outlet; and a program guide; all for $19.95, a savings of at least $1.90 off the a la carte rate.

All of these pass along to customers some of the economies of delivering multiple services to one residence. It is also good marketing, comparable to package pricing in most other businesses (season tickets, 1 cent sales, magazine promotions and subscriptions, and the telephone discount noted above). See, e.g., Bundling of Cellular Customer Premise Equipment & Cellular Service, 7 F.C.C.Rcd. 4028, 4030-31 (1992). It has also been shown to reduce pay TV churn in many markets.

B. Installation, Package, and Other Discounts Do Not Violate Buy Through Rules

None of these discounts violate the buy through/discrimination restriction. Specifically:

1. Installation discounts make economic sense if an

operator can recover some of the cost in satellite tier and premium prices. They make less sense when the basic-only customer takes less product from which an operator can earn a return. The basic-only customer is given exactly the opportunities for discounts available to other customers.

2. Multi-pay discounts do not distinguish between basic-only and satellite tier subscribers. Consider the Commission's note 7 example, in which an HBO subscriber is "offered Showtime for a price lower than a subscriber who does not buy HBO." Showtime does not "cost" less to the two-pay customer than to the one pay customer. Showtime is always available at the first pay price to any first pay customer. Only if one subscribes to two pays does the cost for each decline. Except in political advertising, "non discrimination" does not mean lowest unit rate.

3. Package discounts do not penalize a basic-only customer. They reward customers who take many products. Thus, a satellite tier customer who also buys HBO at $10 may be rewarded with a free program guide, whereas a basic-only customer who also buys HBO at $10 should not qualify for the same guide. Likewise, a $10 pay service may be packaged with a $10 "satellite tier" so that a subscriber to the pay/satellite tier package receives a package discount of $2. (This is common in a system where an addressable converter is needed for both satellite tier and pay.

A subscriber to both is given a discount because the pay subscription provides the converter). The package rate is not a "rate charged for video programming offered on a per channel or per program basis." The same nondiscriminatory $10 pay rate is being extended to basic customers; but if the basic customer does not take the pay/satellite tier package, he or she does not qualify for the package discounts. In other words, both a la carte and satellite tier rates may be discounted through packages without violating the discrimination proscription.

CONCLUSION

For the foregoing reasons, Continental suggests that the Commission adopt the following buy through regulations.

76.____(a). A cable operator may not require the subscription to any tier other than the basic service tier as a condition of access to video programming offered on a per channel or per program basis. "Tier" means a group of video programming services which are sold only in combination, other than video programming carried on the basic service tier and video programming offered on a per channel or per program basis.

(b) A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis. A cable operator may extend discounts or other promotional benefits to subscribers of packages of services if subscribers to basic service may qualify for the discount or benefits by purchasing the same package. A cable operator may assess a separate and distinct converter charge (in addition to applicable installation charges) as as a condition to installing addressable converters necessary for subscribers to the basic service to access video programming offered on a per channel or per program basis.

(c) The prohibitions in subsections (a) and (b) shall not extend to systems which do not authorize or deauthorize all non-basic services by addressable converter. This exception shall expire October 5, 2002, unless the Commission waives compliance pursuant to subsection (d).

(d) On petition by a cable operator, the Commission may waive the requirements of this Section and/or extend the compliance date if the Commission determines that compliance would require the cable operator to increase its rates or that waiver is otherwise in the public interest.

Respectfully submitted,

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